



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R.L. Lee Construction

File: B-255214

Date: February 7, 1994

Randall L. Lee for the protester.
Leonard G. Crowley, Esq., and Paul M. Fisher, Esq.,
Department of the Navy, for the agency.
David Hasfurther, Esq., and Linda C. Glass, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency determination to allow bidder to correct an alleged mistake in its low bid prior to award was proper where the bidder presented clear and convincing evidence establishing both the existence of its mistake and its intended bid price, and the corrected bid would remain low as corrected.

DECISION

R.L. Lee Construction protests the award of a contract to William G. Tadlock Construction under invitation for bids (IFB) No. N68711-92-B-3558, issued by Department of the Navy for the construction of a replacement building at the Naval Command, Control and Ocean Surveillance Center in San Diego, California. Tadlock alleged a mistake in its bid after bid opening and was permitted to correct the price of its bid before award. Lee contends that the mistake would not have occurred but for the negligence of the bidder in transmitting its prices to its representative at the bid opening and that Tadlock should, consequently, have to accept award at the price it actually bid or withdraw its bid.

We deny the protest.

The IFB was issued on May 4, 1993. Bidders were to submit prices for a base item, which covered all work except that covered by the additive work item, and for an additive work item, which covered work required by a specified drawing. Seven bids were received by the June 3 bid opening. Tadlock

submitted the low total bid of \$247,533, with prices of \$228,791 and \$18,742, respectively, for the base and the additive items. Lee submitted the second low total bid of \$299,926, with respective prices of \$285,505 and \$14,421.

On June 3, after bid opening, Tadlock notified the contracting officer that a mistake had occurred in one of the item prices it had submitted. Tadlock stated that due to the possibility that quotes it had received from potential subcontractors or suppliers might change prior to bid opening, it had sent a representative with a signed, but unpriced, bid to the bid opening location to await instructions as to what prices to insert on the bid. Approximately 10 minutes before bid opening, Tadlock notified its representative by cellular phone of the prices to insert on the bid. According to Tadlock, because of outside interference that occurred during the call, the representative misunderstood the base item price to be \$228,791, instead of the intended \$278,791, and inserted that price on the bid. Tadlock submitted statements affirming these facts along with a computer spreadsheet printout detailing the compilation of its bid prices and copies of quotes from its subcontractors and suppliers. The agency reviewed these documents and concluded that Tadlock's bid contained an error based on the magnitude of the difference between Tadlock's bid price for the base item, the government estimate, and the other bids. Further, the agency found that Tadlock's worksheets clearly showed the amount of the intended bid. Based on the documents submitted by Tadlock, the agency permitted Tadlock to make an upward correction of its bid price to \$297,533. Award was made to Tadlock on September 28, in the amount of \$278,791 for the base bid item only. Lee's protest followed.

A bidder seeking upward correction of its bid before award must submit clear and convincing evidence showing that a mistake was made, how the mistake occurred, and the intended price. Federal Acquisition Regulation (FAR) § 14.406-3(a). Workpapers may constitute part of that clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. McInnis Bros. Constr., Inc., B-251138, Mar. 1, 1993, 93-1 CPD ¶ 186. Correction is not precluded merely because of the closeness of the corrected price and the next low bidder's price as long as the intended bid price is clearly established and that price will remain low after correction. Pacific Components, Inc., B-252585, June 21, 1993, 93-1 CPD ¶ 478.

Here, while Tadlock submitted the apparent low, responsive total bid of \$247,533, there was a large disparity between Tadlock's bid price of \$228,791 for the base item, Lee's second low bid of \$285,505 for that item, and the government

estimate of \$247,977. This disparity, coupled with the disparity with the other bids, supported Tadlock's position that it had made a mistake in its bid. Tadlock's worksheets, accompanied by the subcontractor/supplier quotes used by Tadlock to calculate its intended bid, confirmed that Tadlock had made a mistake in its bid and intended to bid \$278,791 for the base item. Specifically, Tadlock's worksheets detailed all the work required to be performed under both the base item and the additive item and its bid price for each effort which totaled up to the respective amounts of \$278,791 and \$18,742. The protester does not dispute the awardee's explanation of its mistake.

Under the circumstances, we think that the agency reasonably determined that Tadlock's evidence of its mistake and intended bid price was convincing and our Office has no basis to question this determination. Further, Tadlock's bid as corrected still remained low and Tadlock did not displace any other bidders. In fact, Tadlock's bid as corrected for the award amount was still \$6,714 less than Lee's second low bid, a margin of approximately 2 percent. See Shoemaker & Alexander, Inc., B-241066, Jan. 15, 1991, 91-1 CPD ¶ 41. Accordingly, the award was proper.

The protest is denied.

Robert P. Murphy
 for Robert P. Murphy
 Acting General Counsel